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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KEITH SPENCER, Plaintiff, v. FIRST FEDERAL BANK; PRUDENTIAL REALTY, EARL WALLACE, JEN DAVIS, M.P.O., KEEFER & ASSOCIATES, 1-100, Defendants.	Case No. 08 CV 0942 DMS (LSP) DEFENDANT OFFICER KEFFER'S NOTICE OF MOTION AND MOTION TO DISMISS, OR IN THE ALTERNATIVE, A MOTION FOR A CLEAR AND CONCISE STATEMENT OF PLAINTIFF'S COMPLAINT [FRCP RULE 12(b)(6) AND RULE 8] Date: August 15, 2008 Time: 1:30 p.m. Courtroom: 10 Judge: Dana M. Sabraw **NO ORAL ARGUMENT UNLESS REQUESTED BY COURT**

TO: PLAINTIFF, ATTORNEY PRO PER:

PLEASE TAKE NOTICE that on August 15, 2008, at 1:30 p.m., or as soon thereafter as this matter may be heard, in the Courtroom of the Honorable Dana M. Sabraw, United States District Court Judge, Courtroom 10 located at the United States District Court for the Southern District of California, 940 Front Street, San Diego, CA, Defendant Officer Keffer ("Keffer") will move, and hereby moves, this Court to dismiss the complaint against Officer Keffer pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure.*

For the reasons set forth in the attached Memorandum in Support of this Motion, incorporated herein by reference and on the records and files in the case and on such additional

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argument or evidence as may be presented at hearing, said Defendant respectfully requests that the Complaint in this matter as to Officer Keffer be dismissed.

Respectfully submitted,

Dated: June 23, 2008

MICHAEL J. AGUIRRE, City Attorney

By /s/ Walter C. Chung
WALTER C. CHUNG
Deputy City Attorney

Attorneys for Defendant
Office Keffer

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I.

INTRODUCTION

As best as Defendant San Diego Police Officer Keffer can tell, Plaintiff brings this instant case as a result of an apparent dispute regarding ownership of real property located as 1224 Weaver Street, San Diego, California. As alleged by Plaintiff, Seminole Mortgage was the legal owner of the property and sold the property to Plaintiff on April 10, 2008. (Complaint 4:18-22; 5:17-20). Prior to Plaintiff's purchase of the property, First Federal Bank apparently claimed an interest in the real property and carried out a foreclosure and trustee sale of the property on June 14, 2007. (Complaint 5:6-10) For reasons not ascertainable from the Complaint, Plaintiff now complains that "First Federal Bank want [sic] the money from the judgment and or the Insurance Policy they obtained but also wants to steal the property from the new Owner Keith Spencer who is not a party to their previous foreclosure or trustee dealings." (Complaint 5:20-23).

Defendant Officer Keffer is sued herein by Plaintiff in this instant action. However, from the Complaint, it is unclear what role Defendant Officer Keffer had in the acts complained of. Nor is it clear from the Complaint, what claim for relief Plaintiff seeks against Defendant Officer Keffer in this action. Moreover, from the Complaint, it is unknown at this time whether this Court even has jurisdiction. Accordingly, Plaintiff's Complaint lacks a clear and concise statement of the relief sought and a clear and concise statement of the facts upon which relief is claimed, which causes Defendant Officer Keffner to bring this instant motion.

II.

LEGAL ARGUMENT

A. Legal Standard of Review

Federal Rule of Civil Procedure Rule 12(b)(6) ("Rule 12(b)(6)") provides that a complaint may be dismissed for failure to state a claim upon which relief can be granted. A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. (*Ilets v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003)). Generally, a complaint may be dismissed as a matter of law for two reasons: (1) lack of cognizable legal theory, or (2) insufficient facts under a cognizable theory. (*Navarro v. Block*, 250 F.3d 729-732 (9th Cir. 2001)). Rule 12(b)(6) also "authorizes a court to dismiss a claim on the basis of a dispositive issue of law." (*Neitzke v. Williams*, 490 U.S. 319, 326 (1989); *see also, Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995), "[a] dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is a ruling on a question of law . . . .") For purposes of a motion to dismiss, well-pleaded factual allegations of the complaint are generally presumed to be true. (*California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 515 (1972)). However, conclusions of law or unwarranted deductions of fact or arguments are not sufficient to state a claim. (*Frederiksen v. Poloway*, 637 F.2d 1147, 1150 n.1 (7th Cir. 1981), *cert. denied*, 451 U.S. 1017).

As will be shown below in Section B, *infra*,, Plaintiff's purported claim for relief against Defendant Officer Keffer fails as insufficient facts have been pled under a cognizable theory.

B. Plaintiff's Complaint Does Not Comply with Federal Rules of Civil Procedure Rule 8

Fed. *Rules of Civ. Proc.* Rule 8 states in pertinent part:

A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

The only pleading requirements under the Federal Rules is that the averments "be simple, concise, and direct." (*McHenry v. Renne* 84 F.3d 1172, 1177 (1996)). Even under this pleading standard, as will be shown below, Defendant Officer Keffer is unclear as to the claims being pled against him and the basis for said claims.

This is because Plaintiff's Complaint contains none of the required elements for a claim for relief. Specifically, nowhere in Plaintiff's Complaint can Defendant Officer Keffer find a short and plain statement of the grounds for this Court's jurisdiction. Indeed, diversity jurisdiction would probably be lacking between Plaintiff and this responding defendant. Nor, does Plaintiff's Complaint contain a short and plain statement of the claim showing that Plaintiff is entitled to any type of relief from Defendant Officer Keffer. The only allegation against Defendant Officer Keffer is that at 10:30 p.m. on May 24, 2008, Defendant Officer Keffer went to the address of the real property in dispute and stated the he "recently got a phone call from someone and that Alleged [sic] the property was owned by the Bank and no one is supposed to be here and that I've been out here before for an eviction." (Complaint 12:1-6). Apparently, Defendant Officer Keffer's presence at the property caused "extreme anxiety for plaintiff's wife, family and himself" which caused them fear that their safety may be in jeopardy as Defendant Officer Keffer appeared at the property "during Klu Klux Klan hours and not lawful business hours." (Complaint 12:21-25). Finally, Plaintiff does not seem to make any intelligible claim for relief against Defendant Officer Keffer. Because of this, Defendant Officer Keffer cannot surmise what claim for relief Plaintiff makes against him and the basis for said claim for relief.

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III.

CONCLUSION

As shown above, Plaintiff's Complaint lacks a clear and concise statement of the relief requested and the basis for said relief. Accordingly, Defendant Officer Keffer requests that this Court dismiss said Complaint, or in the alternative, require Plaintiff to file an amended complaint that complies with FRCP Rule 8.

Dated: June 23, 2008

MICHAEL J. AGUIRRE, City Attorney

By /s/ Walter C. Chung
WALTER C. CHUNG
Deputy City Attorneys
Attorneys for Defendant Officer Keffer

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KEITH SPENCER, **Plaintiff,** **v.** **FIRST FEDERAL BANK; PRUDENTIAL REALTY, EARL WALACE, JEN DAVIS, M.P.O., KEEFER & ASSOCIATES, 1-100,** **Defendants.**	**Case No.: 08CV942 DMS (LSP)** **CERTIFICATE OF ECF SERVICE**

Certificate of ECF Service

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I served the individuals on the service list attached hereto the following documents:

Original of:

- **DEFENDANT OFFICER KEFFER'S NOTICE OF MOTION AND MOTION TO DISMISS, OR IN THE ALTERNATIVE A MOTION FOR A CLEAR AND CONCISE STATEMENT, OF PLAINTIFF'S COMPLAINT;**
- **DEFENDANT OFFICER KEFFER'S MOTION TO DMIS, OR , IN THE ALTERNATIVE, A MOTION FOR A CLEAR AND CONCISE STATEMENT OF PLAINTFIF'S COMPLAINT; and**
- **CERTIFICATE OF ECF SERVICE OF JUNE 23, 2008.**

Filed June 23, 2008 on the ECF system and served pursuant to General Order No. 550, with:

Clerk of the Court
United States District Court
Southern District of California
880 Front Street, Suite 4290
San Diego, CA 92101

Keith Spencer **1224 Weaver Street** **San Diego, CA 92114** **Attorney Pro Per**	**Via United States Mail**
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